

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

FILED  
JAMES BONINI  
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U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
WESTERN DIV. DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHN D. BRAY,

Defendant.

No.

**3:08 cr 093**

**WALTER HERBERT RICE**  
INDICTMENT

26 U.S.C. § 7201

26 U.S.C. § 7202

The Grand Jury charges that:

At all times relevant herein, unless otherwise specified:

INTRODUCTION

1. Defendant **JOHN D. BRAY** ("**BRAY**") was a resident of Dayton, Ohio.
2. Beginning in or about June 1996 through in or about February 2004, **BRAY** was employed by an individual known to the Grand Jury and identified as "O.M." O.M. owned four moving companies located in the Dayton, Ohio area: (1) Arpin Preferred Movers; (2) Greater Cincinnati Transfer; (3) Greater Dayton Moving and Storage; and (4) Howard Van Lines (collectively, "moving companies").
3. **BRAY** was the person solely responsible for handling the payroll services for each of the moving companies, including the preparation and filing of federal employment tax returns and the collection and payment of said employment taxes to the relevant federal taxing agency on a regular basis.

4. The Internal Revenue Service ("IRS") was an agency of the United States Department of Treasury responsible for administering and enforcing the tax laws of the United States and collecting the taxes owed to the Treasury of the United States by its citizens and residents.

5. In general, employers are required by law to withhold, truthfully account for, and pay over employment taxes to the IRS on the wages that they paid to their employees.

6. Federal income taxes imposed on wages paid to employees ("withholding taxes") and Federal Insurance Contribution Act taxes ("FICA taxes"), as more particularly described below, constitute employment taxes ("employment taxes").

A. Withholding Taxes: In general, an employer must deduct and withhold income tax on the amount of wages that are actually or constructively paid to its employees, and pay over those withholding taxes to the IRS. The amount of withholding taxes is based on an employee's marital status and the withholding allowances as reported by the employee to the employer on the IRS Form W-4.

B. FICA Taxes: FICA taxes are comprised of two elements: old-age, survivor, and disability insurance, which is commonly referred to as "Social Security," and hospital insurance, which is commonly referred to as "Medicare." Social Security taxes are used to fund retirement and disability benefits while Medicare taxes are used to provide health and medical benefits for the aged and disabled. Employers are required to withhold FICA taxes from employee wages and pay a matching amount of these

taxes to the IRS.

7. Employers are required to report employment tax liabilities to the IRS on an Employer's Quarterly Federal Tax Return, Form 941 ("Form 941"). Forms 941 are generally filed quarterly and are due to the IRS one month after the conclusion of each quarter. An employer must pay over employment taxes to the IRS in full by the due date of the Form 941. Forms 941 summarize the total wages and total withholdings of income tax, Social Security tax, and Medicare tax for the quarter, including the amount of each monthly tax deposit.

8. **BRAY** was responsible for preparing employee payroll checks and withholding federal income tax, as well as FICA taxes, from the paychecks of the employees of the moving companies. **BRAY** was responsible for paying over to the IRS the amount of federal income tax withheld and the total FICA taxes. **BRAY** was responsible for filing quarterly Forms 941 with the IRS for each of the moving companies. **BRAY** was responsible for issuing annual Forms W-2 from the moving companies to their employees.

9. On or about January 6, 1998, **BRAY** opened business checking account number XXXXX8544 with Bank One (now known as J.P. Morgan Chase) in the name of Harvest Ministries, Inc. DBA Automated Payroll Systems ("Harvest Ministries account"). **BRAY** was listed as the owner/sole proprietor of the business.

10. In or about January 1998, **BRAY** advised O.M. that **BRAY** would be using Prism Financial, an entity purporting to be a payroll business, to provide payroll services for the moving companies from that time forward. However, **BRAY** well knew that Prism Financial was a fictitious entity which had never been in the business of providing payroll services and that Prism Financial did not actually provide payroll services to the moving companies.

11. At a time unknown to the Grand Jury, but in or before 1996, Greater Dayton Moving and Storage ("GDMS") rented Post Office Box #881 in Fairborn, Ohio. On or about November 17, 1999, **BRAY** assumed the rental of that same Post Office Box from GDMS and rented it in the name of "John Bray - GMWA." **BRAY** used that Post Office Box as a mailing address for Harvest Ministries, Inc., and Prism Financial.

12. Beginning on or about January 5, 2001, through on or about January 6, 2004, **BRAY**, operating out of his home located in Dayton, Ohio, generated checks, preprinted with the signature of O.M., from the moving companies for withheld employment taxes using a business computer and printer. Those checks were written to a number of different payees, including, but not limited to, the following: "Prism Financial Services," "Automated Paychecks Systems," "Automated Paychecks Processing," and "Prism Financial - Payroll Withholding." Those checks were deposited into the Harvest Ministries account.

13. With the exception of approximately twenty checks that **BRAY** wrote to the IRS from the moving companies between on or about March 31, 2000 and on or about November 20, 2000, and which the IRS used in order to satisfy some of the back taxes owed by the moving companies, **BRAY** took the remainder of the funds that should have been paid over to the IRS as employment taxes and deposited those funds into the Harvest Ministries account. Rather than pay over those funds to the IRS, **BRAY** used the funds in the Harvest Ministries account for his personal benefit including, but not limited to, the following expenditures:

- A. Beginning on or about June 5, 2001, through on or about May 20, 2005, **BRAY** issued checks to himself from the Harvest Ministries account totaling approximately \$309,650.00;

- B. Beginning on or about March 28, 2001, through on or about November 1, 2003, **BRAY** issued checks to Cross Point United Methodist Church from the Harvest Ministries account totaling approximately \$28,676.96;
- C. Beginning on or about July 20, 2001, through on or about January 28, 2003, **BRAY** issued checks from the Harvest Ministries account to the Miami Valley Community Partnership, totaling approximately \$161,916.47;
- D. Beginning on or about February 6, 2002, through on or about July 21, 2003, **BRAY** issued checks from the Harvest Ministries account to "Pastabilities," a restaurant business which **BRAY** had established, totaling approximately \$147,500.00.

14. From on or about July 31, 2001, through on or about December 31, 2003, **BRAY** failed to file Forms 941, Employer's Quarterly Federal Tax Returns, with the IRS on behalf of the moving companies.

**COUNT ONE**  
**[26 U.S.C. § 7201 - Tax Evasion]**

15. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

16. Beginning on or about January 1, 2001, through on or about March 24, 2003, in the Southern District of Ohio and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2001: (1) by preparing and causing to be prepared, and by signing and filing, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, on behalf of himself, which was filed with the Internal Revenue Service on or about

March 24, 2003, wherein it was stated that his taxable income for said calendar year was the sum of \$16,615, and that the amount of tax due and owing thereon was the sum of \$994, whereas, as he then and there well knew and believed, his true taxable income for the 2001 calendar year was substantially in excess of that heretofore stated and that upon said additional taxable income a substantial additional tax was due and owing to the United States of America; and (2) by using the Harvest Ministries account as a nominee in order to conceal his income and assets.

In violation of Title 26, United States Code, Section 7201.

**COUNT TWO**  
**[26 U.S.C. § 7201 - Tax Evasion]**

17. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

18. On or about April 15, 2003, in the Southern District of Ohio and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2002: (1) by preparing and causing to be prepared, and by signing and filing, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, on behalf of himself, which was filed with the Internal Revenue Service on or about April 15, 2003, wherein it was stated that his taxable income for said calendar year was the sum of \$6,896, and that the amount of tax due and owing thereon was the sum of \$0, whereas, as he then and there well knew and believed, his true taxable income for the 2002 calendar year was substantially in excess of that heretofore stated, and that upon said additional taxable income a substantial additional tax was due and owing to the United States of America; and (2) by using the Harvest Ministries account as a nominee in order to conceal his income and assets.

In violation of Title 26, United States Code, Section 7201.

**COUNT THREE**  
**[26 U.S.C. § 7201 - Tax Evasion]**

19. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

20. On or about January 30, 2004, in the Southern District of Ohio and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 2003: (1) by preparing and causing to be prepared, and by signing and filing, a false and fraudulent U.S. Individual Income Tax Return, Form 1040, on behalf of himself, which was filed with the Internal Revenue Service on or about January 30, 2004, wherein it was stated that his taxable income for said calendar year was the sum of \$23,749, and that the amount of tax due and owing thereon was the sum of \$3,216, whereas, as he then and there well knew and believed, his true taxable income for the 2003 calendar year was substantially in excess of that heretofore stated, and that upon said additional taxable income a substantial additional tax was due and owing to the United States of America; and (2) by using the Harvest Ministries account as a nominee in order to conceal his income and assets.

In violation of Title 26, United States Code, Section 7201.

**COUNTS FOUR THROUGH TEN**  
**[26 U.S.C. 7202 - Willful Failure to Account  
For and Pay Over Employment Taxes]**

21. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

22. On or about the dates set forth in the table below, in the Southern District of Ohio

and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, having deducted and collected from the total taxable wages of the employees of Arpin Preferred Movers federal income taxes and FICA taxes in the sums set forth in the table below, willfully failed to truthfully account for and pay over to the Internal Revenue Service said federal income taxes withheld and FICA taxes due and owing to the United States of America for each of the quarters listed in the table below, each constituting a separate count of this Indictment:

<b>Count</b>	<b>Quarter Ending</b>	<b>Employment Taxes Withheld</b>	<b>Employment Taxes Paid Over</b>	<b>Employment Taxes Not Paid Over</b>
4	6/30/02	\$4,925.41	\$0.00	\$4,925.41
5	9/30/02	\$9,455.25	\$0.00	\$9,455.25
6	12/31/02	\$9,510.57	\$0.00	\$9,510.57
7	3/31/03	\$7,321.30	\$0.00	\$7,321.30
8	6/30/03	\$6,061.49	\$0.00	\$6,061.49
9	9/30/03	\$7,643.93	\$0.00	\$7,643.93
10	12/31/03	\$5,332.80	\$0.00	\$5,332.80

In violation of Title 26, United States Code, Section 7202.

**COUNTS ELEVEN THROUGH SEVENTEEN**  
**[26 U.S.C. 7202 - Willful Failure to Account**  
**For and Pay Over Employment Taxes]**

23. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

24. On or about the dates set forth in the table below, in the Southern District of Ohio and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, having deducted and collected from the total taxable wages of the employees of Greater Cincinnati Transfer federal income taxes and FICA taxes in the sums set forth in the table below, willfully failed to truthfully



account for and pay over to the Internal Revenue Service said federal income taxes withheld and FICA taxes due and owing to the United States of America for each of the quarters listed in the table below, each constituting a separate count of this Indictment:

Count	Quarter Ending	Employment Taxes Withheld	Employment Taxes Paid Over	Employment Taxes Not Paid Over
11	6/30/02	\$9,125.95	\$0.00	\$9,125.95
12	9/30/02	\$10,830.81	\$0.00	\$10,830.81
13	12/31/02	\$8,366.98	\$0.00	\$8,366.98
14	3/31/03	\$7,842.55	\$0.00	\$7,842.55
15	6/30/03	\$11,964.59	\$0.00	\$11,964.59
16	9/30/03	\$13,098.56	\$0.00	\$13,098.56
17	12/31/03	\$11,340.04	\$0.00	\$11,340.04

In violation of Title 26, United States Code, Section 7202.

**COUNTS EIGHTEEN THROUGH TWENTY-FOUR**  
**[26 U.S.C. 7202 - Willful Failure to Account**  
**For and Pay Over Employment Taxes]**

25. Paragraphs one through fourteen of the Indictment are hereby realleged and incorporated as if fully set forth herein.

26. On or about the dates set forth in the table below, in the Southern District of Ohio and elsewhere, defendant **JOHN D. BRAY**, a resident of Dayton, Ohio, having deducted and collected from the total taxable wages of the employees of Greater Dayton Moving and Storage federal income taxes and FICA taxes in the sums set forth in the table below, willfully failed to truthfully account for and pay over to the Internal Revenue Service said federal income taxes withheld and FICA taxes due and owing to the United States of America for each of the quarters listed in the table below, each constituting a separate count of this Indictment:

Count	Quarter Ending	Employment Taxes Withheld	Employment Taxes Paid Over	Employment Taxes Not Paid Over
18	6/30/02	\$25,408.66	\$0.00	\$25,408.66
19	9/30/02	\$26,557.27	\$0.00	\$26,557.27
20	12/31/02	\$29,873.74	\$0.00	\$29,873.74
21	3/31/03	\$18,356.35	\$0.00	\$18,356.35
22	6/30/03	\$22,455.65	\$0.00	\$22,455.65
23	9/30/03	\$24,609.24	\$0.00	\$24,609.24
24	12/31/03	\$12,264.60	\$0.00	\$12,264.60

In violation of Title 26, United States Code, Section 7202.

A TRUE BILL

\_\_\_\_\_/s/\_\_\_\_\_  
Foreperson

GREGORY G. LOCKHART  
United States Attorney

  
VIPAL J. PATEL  
Deputy Criminal Chief